

ELLEN F. ROSENBLUM
Attorney General
BRIAN SIMMONDS MARSHALL #196129
Senior Assistant Attorney General
Department of Justice
100 SW Market Street
Portland, OR 97201
Telephone: (971) 673-1880
Fax: (971) 673-5000
Email: Brian.S.Marshall@doj.state.or.us

Attorney for Proposed-Intervenor State of Oregon

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

COMMITTEE TO RECALL DAN
HOLLADAY, JEANA GONZALES, and
ADAM MARL,

Plaintiffs,

v.

KATTIE RIGGS, City Recorder for Oregon
City, in her official capacity,

Defendant.

Case No. 3:20-CV-01631-YY

OREGON'S ANSWER IN INTERVENTION
PURSUANT TO RULE 24(C)

Pursuant to Federal Rule of Civil Procedure 24(c), the State of Oregon sets out the claims and defenses for which intervention is sought under 28 U.S.C. § 2403(b) as follows:

CLAIMS SUBJECT TO INTERVENTION

1.

In response to paragraphs 37–39 of the Complaint (ECF No. 1, First Claim for Relief, Counts 1–2), the State intervenes to present evidence and argument that ORS 246.910(1) is consistent with Article II, Section 18 of the Oregon Constitution.

2.

In response to paragraphs 40–42 of the Complaint (Second Claim for Relief, Counts 1–2), the State intervenes to present evidence and argument that ORS 246.910(1) is consistent with the First and Fourteenth Amendments to the U.S. Constitution.

3.

In response to the Complaint’s prayer for relief (paragraphs A–I), the State intervenes to present evidence and argument that Plaintiffs are not entitled to any relief.

FIRST AFFIRMATIVE DEFENSE
(Standing)

4.

Plaintiffs do not have standing to assert their claims.

SECOND AFFIRMATIVE DEFENSE
(Mootness)

5.

Plaintiffs’ claims are moot.

THIRD AFFIRMATIVE DEFENSE
(*Coeur d’Alene*)

6.

Plaintiffs’ claims and the relief they request are barred because they “implicat[e] special sovereignty interests.” *Idaho v. Coeur d’Alene Tribe of Idaho*, 521 U.S. 261, 281 (1997).

FOURTH AFFIRMATIVE DEFENSE
(Abstention – Declaratory Judgment Jurisdiction)

7.

The district court should decline to exercise its declaratory judgment jurisdiction. *See, e.g., Wilton v. Seven Falls Co.*, 515 U.S. 277, 286 (1995).

FIFTH AFFIRMATIVE DEFENSE
(*Pennhurst*)

8.

The Court's adjudication of Plaintiffs' claim that a state statute violates the state constitution is barred by sovereign immunity and the Eleventh Amendment. *See Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 106 (1984).

SIXTH AFFIRMATIVE DEFENSE
(Abstention – *Pullman/Reetz*)

9.

The district court should abstain from exercising jurisdiction over Plaintiffs' claims. *See, e.g., Reetz v. Bozanich*, 397 U.S. 82, 86 (1970); *City of Meridian v. S. Bell Tel. & Tel. Co.*, 358 U.S. 639, 641 (1959).

SEVENTH AFFIRMATIVE DEFENSE
(Abstention – *Thibodaux*)

10.

The district court should abstain from exercising jurisdiction over Plaintiffs' state law claims. *See, e.g., Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25 (1959).

EIGHTH AFFIRMATIVE DEFENSE
(Supplemental Jurisdiction)

11.

The district court should decline supplemental jurisdiction over Plaintiffs' state law claims. *See* 28 U.S.C. § 1367(c).

NINTH AFFIRMATIVE DEFENSE
(Failure to State a Claim)

12.

Plaintiffs' complaint fails to state a claim upon any relief may be granted.

WHEREFORE, the State of Oregon prays for a judgment dismissing Plaintiffs' complaint in its entirety, and awarding the State its costs and disbursements incurred herein, and for such other and further relief as the Court may deem appropriate.

DATED March 4, 2021.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General

s/ Brian Simmonds Marshall
BRIAN SIMMONDS MARSHALL #196129
Senior Assistant Attorney General
Trial Attorney
Oregon Department of Justice
100 SW Market Street
Portland, OR 97201
Tel (971) 673-1880
Fax (971) 673-5000
Brian.S.Marshall@doj.state.or.us
Of Attorneys for Proposed-Intervenor
State of Oregon